

VZCZCXRO3922
PP RUEHDBU RUEHFL RUEHKW RUEHLA RUEHROV RUEHSR
DE RUEHCV #0446/01 0611911
ZNY CCCCC ZZH
P 021911Z MAR 07
FM AMEMBASSY CARACAS
TO RUEHC/SECSTATE WASHDC PRIORITY 7982
INFO RUEHWH/WESTERN HEMISPHERIC AFFAIRS DIPL POSTS PRIORITY
RUEHZL/EUROPEAN POLITICAL COLLECTIVE PRIORITY
RUCNDT/USMISSION USUN NEW YORK PRIORITY 0776
RHEHNSC/NSC WASHDC PRIORITY
RUMIAAA/HQ USSOUTHCOM MIAMI FL PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 000446

SIPDIS

SIPDIS

HQSOUTHCOM ALSO FOR POLAD
DEPT PASS TO AID/OTI (RPORTER)

E.O. 12958: DECL: 02/12/2017

TAGS: [PGOV](#) [KDEM](#) [VE](#)

SUBJECT: HOW, WHY VENEZUELA'S 2007 ENABLING LAW DIFFERS
FROM THE PAST

REF: A. CARACAS 00219

[1](#)B. CARACAS 404

[1](#)C. CARACAS 411

[1](#)D. 00 CARACAS 3043

[1](#)E. 05 CARACAS 1355

CARACAS 00000446 001.2 OF 003

Classified By: POLITICAL COUNSELOR ROBERT DOWNES FOR 1.4 (D)

Summary

[1](#)1. (C) The BRV frequently tries to argue that the Enabling Law (Ley Habilitante) passed January 31 giving Chavez broad power to legislate by decree for the next 18 months is no different from past decree laws. A review of previous Enabling Laws, however, shows that the current law is much broader, less precise, and lasts longer than any of the previous eight enabling laws, including the two passed during Chavez' first term. Post outlines key differences between the 2007 law, its predecessors, and regional practice to refute BRV myths about Chavez' current decree authority for countries that may be sympathetic to BRV arguments. End Summary.

Decree Laws: Separating Fact From Fiction

[1](#)2. (U) The National Assembly (NA) approved January 31 an omnibus Enabling Law (Ley Habilitante) granting President Chavez broad authority to issue decree laws in 11 different areas for 18 months (Ref A). The scope of the Enabling Law seems virtually unlimited, and has provoked criticism from the opposition and regional organizations, such as the Andean Commission of Jurists, for violating the democratic principle of separation of power. The decrees will not be subject to any further NA action or review, and will require only to be published in the national gazette to become law. Chavez has decreed four new decree-laws so far. The first, which does not appear to be within the scope of his power, created the Order of February 4 award (commemorating his failed 1992 coup) to honor those who have worked to instill "justice and a love of peace in society." Two others increased state intervention in the economy (Refs B and C).

[1](#)3. (U) The BRV has defended the wide-ranging decree powers

conferred on the President by citing past precedents in Venezuelan history. However, this argument ignores the fact that Chavez controls 100 percent of the National Assembly and all other government institutions, something no other Venezuelan President has had before. Two Presidents did however have a majority in the legislature when they received the special powers. A comparison of the 2007 Enabling Law with previous enabling laws shows the former is much broader and less detailed than the latter ones, including both of Chavez' previous authorizations. Chavez himself has called it, "the mother of all (enabling) laws." Post outlines key differences below to refute prevalent BRV myths about Chavez' decree power.

National and Regional Precedents

¶4. (SBU) BRV Myth #1: Decree powers are nothing new in Venezuelan history.

Reality: Decree authority was granted to six presidents before Chavez -- Romulo Betancourt (1960), Carlos Andres Perez (1974), Jaime Lusinchi (1984), Luis Herrera (1979), Ramon Velazquez (1993), and Rafael Caldera (1994) -- but only in time of economic emergencies, usually following a major fall in oil prices. In fact, article 190 of the 1961 Constitution specifically limited the president's decree authority to economic and financial matters during fiscal crises. In 1984, for example, Lusinchi implemented an IMF-approved structural adjustment program. During a 1993 crisis, Velazquez implemented badly-needed economic reforms and laws that had languished in the then-Congress for more than a year. In 1999, Chavez faced a USD 9 billion budget deficit and what then-Congressman Omar Barboza (Accion Democratica) called "the worst economic crisis in living memory."

CARACAS 00000446 002.2 OF 003

¶5. (SBU) The 1999 Constitution overseen by Chavez removed the restrictions on the scope of the decree powers, giving the President wide discretion to issue decrees in any area he desires, not just economic and financial matters (Article 236). At the time, several Latin American academics blasted the change as giving the President too much power. In 2000 Chavez used these expanded powers to "revitalize" the economy and to make an essential "adjustment to the constitution" (Ref D). Chavez and several high level Chavistas have said the 2007-2008 decree laws will be aimed at implementing a much broader "socialist" agenda aimed at transforming Venezuela economically and politically.

¶6. (SBU) BRV Myth #2: Decree authority is nothing new in Latin America.

Reality: While we defer to other posts on the mechanics of how decree authority is obtained, a brief review of various constitutions in the region indicates the decree powers authorized in the Venezuelan constitution substantially exceed those permitted in much of the region. In some countries, decree authority frequently appears to be limited to emergency situations (Colombia, Argentina, Guatemala) and restricted in scope (usually to economic and financial measures as was the case in the 1961 Venezuelan constitution; examples Peru, Ecuador, Honduras). In some cases, the decree laws themselves appear to be of limited duration (Brazil) and subject to legislative review (Mexico).

Duration

¶7. (SBU) BRV Myth #3: Chavez needs decree authority for 18 months to issue laws before and after constitutional changes are made. This is a reasonable length of time.

Reality: Most decree powers were granted for three to six months to quickly address emergency situations. The only two exceptions have been Lusinchi (1984) and Chavez (2000), both of whom were given decree authority for one year.

Scope

¶8. (SBU) BRV Myth #4: Enabling laws have always drawn criticism and the opposition is only complaining because its interests will not benefit from the new laws.

Reality: It is true that enabling laws have always engendered debate because of concern about concentrating excessive power within the executive by ceding legislative authority to him. As a result, presidents tended to tread carefully when requesting the power, explaining their exact reasons and the results they hoped to accomplish. Likewise, Congress usually detailed the areas in which the President could exercise decree authority and the specific types of laws that the president could pass. The 1993 and 2001 enabling acts required the President to notify the legislature 10 days before the decree laws were promulgated.

¶9. (SBU) The 2007 law is the least detailed bill ever, listing vague descriptions of the measures the President can take in each of 11 different areas, including one (energy) which the President had not initially requested. Aside from publicly declaring his intention to nationalize the electricity, telecommunications, and petroleum sectors, Chavez does not appear to have shared his plans with his parliamentarians as indicated by the public bickering between the NA and Cabinet ministers for control of certain laws like the National Police Law. The President is also not required to notify the NA before promulgating laws. The fact that Chavez' first decree creating the Order of February 4 was not covered by the enabling law, shows his disregard for the minimal limits that were in place.

The Theoretical Veto

¶10. (SBU) BRV Myth #5: The Constitution allows the people to overturn any decree laws via referendum.

CARACAS 00000446 003.2 OF 003

Reality: The BRV's control of the National Electoral Council (CNE), the CNE's openly pro-Chavez bias during the 2004 recall referendum and subsequent elections, and the precedent of the Tascon List, which the BRV used to fire pro-opposition civil servants and deny opposition supporters government benefits (Ref E), make it highly unlikely that voters would attempt to call a referendum against any Chavez decree, or that such an attempt would even be successful.

Comment

¶10. (C) Post offers the points above for discussing the Enabling Law with audiences that may be sympathetic to the BRV's arguments. The 2007 Enabling Law grants Chavez the widest-ranging, least-restrictive decree authority in Venezuelan history and exceeds regional practice. By ceding its legislative authority, the National Assembly has permitted Chavez to concentrate even more power in the executive branch and assisted the continued dismantling of democratic institutions.

BROWNFIELD